

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Terence Banks,
Plaintiff

V.

Case No.14-cv-0381

Nurse Leslie, et al.,
Defendant's.

PLAINTIFF'S RESPONSE TO DEFENDANT'S PROPOSED FINDINGS OF FACT'S
LESLIE PATTON, BILL COE AND, DANA MEHRING AND, NURSE PRACTITIONER
MAHITA GONE IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT.

NOW COMES, the Plaintiff, Terence Banks, hereby submitting his
response to the Defendant's Proposed Findings Of Facts as follows:

PLAINTIFF'S RESPONSE TO DEFENDANT'S PROPOSED FINDINGS OF FACT'S.

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. & 1331, as the Plaintiff, Terence Banks, has alleged a violation of his constitutional rights pursuant to 42 U.S.C. & 1933.

RESPONSE: No dispute.

2. The Eastern District of Wisconsin is the proper venue for this action pursuant to 28 U.S.C. & 1391(b) as the events or omissions giving rise to the claim occurred in Racine County, Wisconsin. (Id)

RESPONSE: No dispute.

3. Banks was incarcerated at the racine county jail from November 12, 2013 to the end of 2014.

RESPONSE: No dispute.

4. On April 3, 2014, Banks filed a complaint with this court seeking recovery under 42 USC & 1933, claiming that the medical Defendant's violated his constitutional rights.

RESPONSE: No dispute.

5. Specifically, Banks alleges that he was subject to deliberately indifferent treatment in relation to wound treatment he received at the jail after his arm was amputated.

RESPONSE: Deny, the plaintiff alleges that he was treated to the extreme cruel and unusual punishment as well as deliberately indifferent at times and intentional ignored at times. (Aff. of Terence Banks par. 64)

6. Banks left arm was amputated as the result of a shotgun blast that struck him on October 8, 2013. He spent the rest of October and the first part of November in the hospital. Banks was transported to the racine county jail on November 12, 2013.

RESPONSE:No dispute.

7.The court's screening order(Doc.8)permitted Banks to litigate a deliberate indifference claim against the Medical Defendant's regarding treatment for his amputation wound.

RESPONSE:No dispute.

8.Banks is seeking compensatory damages,injunctive relief,and attorneys' fees based on the Defendant's violation.

RESPONSE:No dispute.

9.Nurse Coe is a licensed practical nurse(LPN)in the state of Wisconsin.His license was active from November 12,2013 through 2014.

RESPONSE:No dispute .

10.Nurse Patton is a registered nurse(RN)in the state of Wisconsin. Her license was active from November 12,2013 through 2014.

RESPONSE:No dispute.

11.Nurse Menring is a registered nurse(RN)in the state of Wisconsin. Her license was active from November 12,2013 through 2014.

RESPONSE:No dispute.

12.NP Gone is a nurse practitioner(NP)in the state of Wisconsin. Her license was active from November 12,2013 through 2014.

RESPONSE:No dispute.

13.From November 12,2013 and into 2014,Nurse Coe,Patton,and Menring and NP Gone were employed by Correctional Healthcare ~~Companies~~ Companies(CHC)to provide healthcare services to inmates at the racine county jail.

RESPONSE:No dispute.

14.While at Froedtert Hospital being treated for his shotgun wound, Banks developed a bacterial infection in his wounded arm.

RESPONSE:No dispute,but dispute as it was contunied becuase the Plaintiff under went a operation and the infection was stopped.

15.Specifically,a note from Froedtert Hospital dated 10/26/13 states "...[Banks] has experienced fevers to 102 degree F and had a positive wound culture for pseudomonas(pansensitive).ID [infectious disease]was consulted and the patient was started on Zosyn,likely for a prolonged duration due to the patient's hardware in the infected field."(Id)

RESPONSE:No dispute,but dispute [infectious disease]was consulted and the patient was started on Zosyn,likely for a prolonged duration

due to the patient's hardware in the infected field." (Id) See, Aff. of Terence Banks par. 15) At no time does the Froedtert Hospital say this, this is only a assumption as to the nurses of Racine County Jail.

16. Thus, an infection in Banks wound pre-dated his admission to the jail.

RESPONSE: dispute, It clearly states that he under went the operation for this and this is no where in the record that says Banks came to Racine County Jail with a infection. See, (Aff. of Terence Banks par. 15)

17. In her role as a licensed healthcare provider at the Racine County Jail Health Services Unit (HSU) Nurse Patton had access to inmate medical records and charts, including progress notes, problems oriented records, written inmate requests for medical care (Medical Slip), medical administration records (MAR), and other medical records, and she has reviewed those documents for Banks as they pertain to this matter. Pertinent portions of those records are attached as Exhibit 1 (Patton Dec., & 4, Exhibit 1.)

RESPONSE: No dispute as to what Nurse Patton does, but dispute that all medical records are there. See, (Aff. of Terence Banks par. 67)

18. Banks was discharged from the hospital and arrived at the jail on November 12, 2013. (Doc. 1, p. 6.)

RESPONSE: no dispute.

19. Over the next several months, jail medical staff treated Banks' amputation wound in a variety of ways; by regularly changing his dressing, providing antibiotics, and by providing pain medication. (See generally Ex. 1)

RESPONSE: No dispute that Banks was giving pain medication, dispute that Banks was given medication that work and the Plaintiff Banks changed his own or had someone else change his dressing. (Aff. of Terence Banks par. 4-76)

20. Banks received Tylenol #3 and regular Tylenol to control his pain. (Patton Dec., Ex. 1, p. 182, 192, 267, 359, 364.)

RESPONSE: No dispute.

21. Tylenol #3 is an opiate painkiller comprised of Codeine and Tylenol used to treat moderate to severe pain. (Patton Dec., # 17)

RESPONSE: No dispute as to Tylenol #3 used to treat moderate pain, dispute as to Tylenol #3 used to treat severe pain. (Aff. of Terence Banks par. 68)

22. At the jail, Banks also received Ciprofloxacin, Cephalexin, Levofloxacin, and Bactrim, all antibiotic drugs.

RESPONSE:No dispute,dispute as to the antibiotic drugs working.
(Aff. of Terence Banks par. 69)

23.Banks signed a refusal form for Cephalexin on December 5,2013.
(Patton Dec.Ex.1,p.193)

RESPONSE:No dispute

24.Banks refused his Tylenol in February and March,2014(Patton Dec.
Ex.1,p.358-59,363-64)

RESPONSE:No dispute to refusing the Tylenol because it was regular
Tylenol not for pain and it was not working at all for severe pain
so at time's it was not taken.(Aff. of Terence Banks par. 68)

25.In addition to the regular administration of painkillers and
antibiotics,Banks' wound dressing was changed regularly at the jail.
(See general Patton Dec.,Ex.1)

RESPONSE:dispute Banks' dressing was only changed when he was not
in pain and attempt to change it his self or pay onther inmates to
change it for him.(Aff. of Terence Banks par. 4)

26.Banks spent the first 12 days of November in at Froedtert Hosp-
ital (Doc.1,p.6)and attended a doctor visit on November 21.(Patton
Dec.Ex.1p.197)

RESPONSE:No dispute.

27.Accordingly,Banks spent 18 days in the jail in November 2013.
(1d)His dressing was changed at least 14 times in November 2013
by medical staff.(Patton Dec.Ex.1,p.197 documents the November dr-
essing changes.)

RESPONSEdispute,The document that the defendant's refer to does not
even have a date on it to determine when this was,also when they
were changed it was Plaintiff or other inmates.(Aff. of Terence
Banks par. 70)

28.Banks' wound dressing was changed by medical staff at least 22
times in December of 2013.(Patton Dec.Ex.1,p.179-80 document the
Decemoer dressing changes.)

RESPONSE:dispute according to the own document's the defendant's
has supplied they only changed the dressing (15)times but that is
not true because the Plaintiff was the one changing the dressing
along with other inmates.

29.On November 20,2013,NP Gone noted that Nurse Leslie Patton
reported that Banks was experiencing drainage from his wound.Nurse
Patton noted that she had cleansed the wound and applied ointment
with a bandage.■NP Gone wrote that Banks should take the antibiotic
Bactrim for 7 days.(Ex.1,p.207)

RESPONSE:No dispute.

30. On December 4, 2013, NP Gone noted that an RN had reported Banks was still experiencing drainage; she prescribed another antibiotic. (Ex.1, p.195)

RESPONSE: No dispute.

31. On December 11, 2013, NP Gone examined Banks. (See Ex.1, p.192) She noted a 2cm wide wound with a scant amount of purulent discharge. There was also a separate 1cm wide open area with no drainage. NP Gone further noted that Banks was on the antibiotic Ciprofloxacin, and that he had previously refused to take the antibiotic cephalexin. NP Gone wrote that Banks should continue to receive regular dressing changes, antibiotics, and pain medication. (See Id).

RESPONSE: dispute, She wrote drainage noted 2 openings 3mm in along structure line pink & dry. See, Defendant's Ex.1.

32. Banks ~~refused~~ refused to have his dressing changed on January 2, 2014, stating, "I don't want to have my dressing changed anymore." (Patton Dec. Ex.1, p.177-78)

RESPONSE: dispute, Banks never stated that to the Nurse. See (Aff. of Terence Banks par. 39)

33. Being a competent adult, Banks had a right to refuse medical treatment. (Patton Decl. & 23)

RESPONSE: No dispute.

34. At this time, Banks refused further treatment from jail medical staff. (Banks proposed Amended Complaint, Doc.105-1, & 93, 151)

RESPONSE: No dispute.

35. Jail medical staff provided Banks with bandages and instructed him on how to change his dressing himself. (Patton Dec., Ex.1, p.170)

RESPONSE: No dispute that Banks was given bandages, but dispute as to he was instructed on how to change dressing.

36. Banks sent an Inmate Medical Request to jail medical staff on January 13, 2014 stating that he felt healthy enough to be transferred to the general population. (Patton Dec., Ex.1, p.170)

RESPONSE: No dispute, but Banks said that because he was being treated like he was in segregation and most of the time not being able to shower the guards were doing all kinds of things to him. (Aff. of Terence Banks par. 71)

37. Nurse Patton had made a medical judgment that Banks was sufficiently healed to change his dressing himself and to wash his own left arm area.

RESPONSE: No dispute.

38. Banks is right handed; he lost his non-dominant hand/arm.

RESPONSE: No dispute, but the defendant's didn't know this until after the Plaintiff filed this law suit.

39. Jail medical staff had made a medical judgment that, for rehabilitation purposes, Banks needed to attempt to adapt to living his life with one arm. (You need to exercise your [right] arm/use it... as you can.") (Patton Dec. & 26-27, Patton Dec. Ex. 1, p. 190)

RESPONSE: dispute because the Plaintiff should have been provided with the correct things such as, flannel strap and wash mitt, lotion and wash mitt, massaging foot spa, foot brush, terry cloth antimicrobial wash mitts, soapy soles, back scrubber, sponge wash mitt, soapy soles elite, curved bath brush, . See Ex. C

40. Banks refused his Tylenol in February 2014. (Patton Dec., Ex. 1, p. 358)

RESPONSE: No dispute.

41. By January 2014, Banks' amputation wound had healed with exception of two small open areas. (Ex. 1, p. 192, 163)

RESPONSE: dispute Banks amputated wound was not fully healed by January 2014.

42. On January of 2014, ~~Patton~~ NP Gone again examined Banks. (Ex. 1, p. 163) She noted no swelling or erythema (redness) at the site of the amputation. She further noted that a scant amount of drainage was coming from a 1.5cm open area on Banks' stump. Banks was provided an antibiotic ointment and band-aids to change himself. (Ex. 1, p. 163)

RESPONSE: No dispute.

43. Infections are common in post-surgical wounds. (Coe Dec., & 15)

RESPONSE: dispute, not all post-surgical's amount to infections. (Aff. of Terence Banks Par. 72)

44. Infections are common in institutional settings such as hospitals and jails. (Coe Dec. & 14)

RESPONSE: dispute, not all infections are common in institutional settings. (Aff. of Terence Banks par. 73)

45. Infections can occur even when optimal care and treatment is provided. (Coe Dec. & 16)

RESPONSE: dispute, because when the right care is taken after there treatment there shouldn't be any infections as long as everything is done correctly. (Aff. of Terence Banks par. 74)

Dated this 4 day of April, 2016.

Terence A. Banks
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